

Jim Justice, Governor

STATE OF WEST VIRGINIA

ADMINISTRATIVE POLICY

Effective: October 31, 2018

Issued By: Ann Urling, Deputy Chief of Staff

Subject: Employee Use of Employer Provided Motor Vehicles

1.0 Purpose

The purpose of this policy is to establish a statewide, uniform policy on the use, assignment, operation and reporting of state owned, leased, or rented motor vehicles.

2.0 Policy

HB 4015 and HB 103 provides that the Director of Fleet Management may promulgate rules and procedures for implementing a comprehensive state fleet management program. The following are parameters in which state employees or non-state employees may use a state motor vehicle.

2.1 Authorized Use State vehicles may only be used for the tasks outlined below. Law enforcement vehicles are exempt from these restrictions.

2.1.1. Travel between the place where the state motor vehicle is dispatched and the place where official state business is performed. Agencies must determine the lowest cost option before traveling by using Travel Management's "Vehicle vs. Reimbursement Calculator".

2.1.2. When on ***paid travel status***, between the place of state business and the place of temporary lodging or for obtaining food.

2.1.3. When on paid travel status and not within reasonable walking distance, between either of the above places and places to obtain meals; places to obtain medical assistance (including drugstore); cleaning establishments and similar places required to sustain the health, welfare or continued efficient performance of the driver, exclusive of places of entertainment.

2.1.4. Transport of other officers, employees or guests of the state when they are on official state business.

2.1.5. Transport of consultants, contractors or commercial firm representatives when such transport is in the direct interest of the state.

2.1.6. Travel between the place of dispatch or place of performance of bona fide state business purpose to your personal residence when specifically authorized by the proper authority in your agency.

A State employee may park a State vehicle overnight at the employee's residence if:

a. The vehicle is assigned as a take home vehicle.

b. For pool vehicles, when the employee's home is located some distance from the vehicle pool location and such retention would result in a savings in time and distance traveled.

- c. Travel to the place of performance of state business must begin too early in the morning to allow for the employee to secure a State vehicle before departing that day.
- d. The employee returns from the place of performance of State business too late in the day to return the state vehicle that day.

2.2 Unauthorized Use State vehicles may not be used as outlined below, except for de minimis personal use (such as a stop for lunch while traveling on state business). Law Enforcement vehicles are exempt from these restrictions.

2.2.1. Any use for personal purpose, other than commuting which has been authorized as specified in Authorized Use.

2.2.2. Travel or tasks which are beyond the vehicle's rated capability.

2.2.3. Transport of family, friends, associates or other persons who are not employees of the state or serving the interest of the state (i.e. hitchhikers).

2.2.4. Transport of cargo which has no relation to the performance of official state business.

2.2.5 Transport of pets, livestock, domestic or wild animals except in the conduct of official State business.

2.2.6. Transport of acids, alcohol, explosives, weapons, ammunition or highly flammable material, except by the course of official duties, specific authorization, or in an emergency situation. Transport of these restricted items must be in compliance with all applicable local, state, and federal laws.

2.2.6. Transport of any item or equipment projecting from the side, front or rear of the vehicle in a way which constitutes an obstruction to safe driving, or a hazard to pedestrians or to other vehicles.

2.2.8. Extending the length of time the vehicle is in your possession beyond that which is required to complete the official purpose of the trip.

2.2.9. Operating a state motor vehicle while under the influence of drugs that could impair driving.

2.2.10. Operating a state motor vehicle after the consumption of alcohol is strictly prohibited.

2.2.11 Transport of employees from the normal place of business to restaurants or other places while not on official State business.

2.2.12 Engaging in any activity that would impede the safe operation of the vehicle.

2.2.13 Attending sporting events, including hunting and fishing, which are not in the service of State business.

2.2.14 Unreasonably extending the length of time the vehicle is in your possession beyond that which is required to complete the official purpose of the trip.

2.2.15 All State employees, with the exception of law enforcement officers carrying out authorized undercover operations, are prohibited from operating state vehicles at any time with any measurable amount of alcohol from alcoholic beverages or controlled substances in their bodies.

2.2.16 Operating a State vehicle without a valid driver's license or while said license is under suspension or revocation.

2.2.17 Smoking, including "vaping", while in a State vehicle.

2.2.18 Adding any non-State issued devices, appliances, radios, antennas, seats, or other after-market equipment to a State vehicle, including but not limited to radar detectors, CB radios, satellite radios, non-state owned fixed-mount GPS devices, speakers or car heaters to a State vehicle. Any aftermarket products including stickers and decals. Exemptions must be approved in writing by the Fleet Management Division.

2.2.19 Removing or disabling any item from a State vehicle that was either installed on the vehicle by the manufacturer or by the State, including but not limited to cruise control, radio, spare tire, jack, State agency decals, door or seat belt warning buzzers, air bags, seats, seat belts, speakers, or On-Star equipment, or State-Owned GPS devices.

2.2.20 Agencies have the authority and responsibility to restrict State employees from operating State vehicles when the employee has a history of being an unsafe or irresponsible

2.3 Responsibilities

2.3.1 Heads of all departments, offices, agencies, commissions, boards, bureaus and institutions are responsible for implementation of this policy and all legislative requirements. Agency heads, Cabinet Secretaries and Agency Fleet Coordinators must weigh all options when considering how to meet the transportation needs of their agency at the lowest cost to the State.

2.3.2 Unauthorized use of state motor vehicles may result in disciplinary action from the operator's agency, up to and including termination.

2.3.3. The driver shall comply with all applicable state and local traffic and parking laws including paying tolls. In the event of a violation of such state and local traffic and parking laws, the driver shall be personally liable for any criminal or civil penalty incurred. All drivers shall be required to notify his or her supervisor of any tickets as soon after receipt as possible (as well as any change in the status of an employee's driver's license) and prior to the payment due date or scheduled court date. Such driver shall also provide his or her supervisor proof that (a) such ticket has been paid within 10 working days after the payment of such ticket or (b) in the case of appeal, the court's final decision.

2.3.4. The driver shall possess a valid driver's license from the state in which he/she lives or in the case of a suspended or revoked license, special work privileges must be awarded by a court. In the case of a suspended or revoked license, the driver shall not operate a state motor vehicle until such privileges have been acknowledged by the WV Board of Risk and Insurance Management (BRIM).

2.3.5. The driver will complete a walk-around inspection and shall be responsible for checking the state motor vehicle before operating to ensure that the vehicle lights, turn signals, brake lights and other safety equipment is functional on the state motor vehicle. If the driver finds any of this equipment is not functioning properly, the driver shall report malfunctions to his or her supervisor as soon as possible in order to arrange for repairs.

2.4 Employee Responsibility for Vehicle Use

2.4.1 Employees are expected to use State vehicles in a responsible manner and within the bounds of all traffic and parking laws. The vehicle operator must pay any towing, storage, parking or traffic fines and tolls resulting from the operator's violation of existing laws or ordinances while operating a state vehicle. The State will not reimburse the operator for any such fines.

2.4.2 Damages or other financial assessments related to State vehicles that, after official agency review, are determined to have been the result of the driver's poor judgment, irresponsibility, negligence, or violation of these rules may be charged to the employee. Such charges or assessments may include, but are not limited to, tow charges, damage to the vehicle and all traffic and parking violations.

2.4.3 Employees must ensure that fuel vendors accept the State fuel card/approved Fleet Management Division fueling mechanism prior to fueling or purchasing other vehicle related services.

2.4.4 Employee shall be responsible for performing a walk-around and pre-trip inspection checking the State vehicle before operation to ensure that the vehicle lights, turn signals, brake lights, and other safety equipment are functional on the State vehicle.

2.4.5 Employees are to lock the doors of State vehicles when the vehicle is not in use.

2.4.6. Employees are not to drive any State vehicle with damages or defects which make the vehicle unsafe for operation. Employees must ensure that state vehicles are maintained in a manner that follows all manufacturer's recommendations including but not limited to the manufacturer's preventative maintenance schedule.

2.4.7. The use of cellular phones while driving is unlawful unless used with a hands-free device. If a cell phone must be used while driving, employees should pull over to the side of the road at the safest opportunity or pull into a rest stop or parking lot and stop the vehicle. **Texting while operating a State-owned vehicle is strictly prohibited and unlawful.**

2.4.8 When fueling a State-owned vehicle, the operator must:

- a. Make every effort to purchase fuel at the least expensive outlet.
- b. Purchase the lowest grade fuel available for the vehicle while following the manufacturer's recommendation.
- c. Purchase E-85 ethanol fuel if the State-vehicle is Flex Fuel capable

2.5 Authorized Operators

2.5.1 Only State employees or agents acting on behalf of the state may operate a state owned, leased or rented vehicle. Federal and other state law enforcement agents acting on behalf of the state and West Virginia National Guard personnel may operate state vehicles in the performance of their official duties. All State employees who operate a state vehicle must:

1. Possess a valid West Virginia driver's license appropriate to the type of vehicle to be driven. The driver's license must not be suspended or set to expire before the State employee is expected to complete their travel.
2. Be an employee of the State of West Virginia during the duration of the travel period.
3. Be conducting official business on behalf of the State. Law Enforcement personnel are exempt from this restriction.

2.6 Authorized Passengers

2.6.1 The following individuals may ride as passengers in a State vehicle:

1. A State employee conducting business on behalf of the state.
2. Wards of the State.
3. A passenger transported by a law enforcement officer.

4. Passengers transported as part of an operator's specific duties, such as law enforcement or Child Protective Services workers.
5. A non-State employee who is an independent contractor or agent conducting business on behalf of the State. All non-State employees traveling in a State-owned vehicle, except as defined in number 2, 3 and 4 above, must sign State (Waiver of Liability form before traveling in a State vehicle.
6. Any request for exception to this policy must be submitted in writing to the Secretary of the Department, requesting the exception. The request must be approved by the Secretary, or their designee, before the exempted passenger travels in a State owned, State-leased or State-rented vehicle.

2.7 What is Personal Use?

2.7.1 The following are examples of taxable personal use of an employer-provided vehicle:

- Commuting between residence and work station, and vacation, weekend use, or use by spouse or dependents. *Reg. §1.162-2(e)*
- The employee goes into his office on the weekend. This is personal commuting, regardless of whether it is required by the employer.

2.7.2 Examples of De Minimis Nontaxable Personal Use

- Small personal detour (defined as less than 5 miles each direction) while on business, such as driving to lunch while out of the office on business.
- Infrequent (not more than one day per month) commuting in employer vehicle. This does not mean that an employee can receive excludable reimbursements for commuting 12 days a year. The rule is available to cover infrequent, occasional situations. *Reg. § 1.132-6(d)(3)*

Example: An employee uses a motor pool vehicle for a business meeting. The employer requires that motor pool vehicles be returned at the end of the business day, but the employee is delayed, and the motor pool is closed when the employee arrives back at the office. The employee takes the vehicle home and returns it the next morning. Assuming that this is an infrequent occurrence for that employee, that is, generally happens no more than once a month, the commuting value of the trip would be considered a nontaxable de minimis fringe benefit. If not an infrequent occurrence, the commute would be taxable to the employee.

Separate records of business and personal mileage are required. *IRC 274(d)*

2.7.3 IRS Requirements for Employer Provided Vehicles

The Internal Revenue Service requires payroll tax withholding and compensation reporting (W-2) for employees using state-owned vehicles for non-business or commuting purposes. These employees must complete and certify Statements of Employer Provided Vehicle Use each payroll period.

If records are not provided by the employee, the value of all use of the automobile is wages to the employee, and the employee can then deduct any substantiated business use on Form 1040. *Reg. §1.132-5(b)*

2.8 Take Home Vehicle Assignment Criteria

2.8.1 Each agency head has discretion to decide whether a take home vehicle should be assigned to a qualifying employee. For employees to be assigned a take home vehicle, the agency must show that the duties of the employee meet one of the following criteria.

1. In the case of an elected or appointed state officer, it shall be shown that the duties of the office require driving about the State of West Virginia in the performance of official duty.
2. In the case of department or commission heads, it shall be shown that the statutory duties imposed in the discharge of the office require traveling a distance greater than one thousand (1,000) miles each month or that they are subject to official duty call at all times.
3. In the case of employees, it must be shown that the major portion of the duties assigned to the employee must require travel on state business in excess of one thousand (1,100) miles each month, or that the vehicle is identified by the agency as an integral part of the job assignment. In addition, at least one of the following criteria must be met:
 - a. The job requires an employee to be on call on a recurring basis beyond normal duty hours and, when called out, requires immediate travel from a residence to a location where specific skills, services, tools, equipment or supplies are necessary to perform the job. **This is typically based on the reporting on the number of call outs during the last 12 months.**
 - b. The job involves leaving directly from home to a continually variable work station, in which travel to a central location to obtain a state-owned vehicle would result in significant amounts of unnecessary travel time and loss of productive hours.
 - c. The employee works from a home office with continual variable work station (inspectors, case workers, investigators, etc.).
 - d. The employee is a law enforcement officer or a public safety emergency responder.

In computing the number of miles required to be driven by a department head or an employee, the distance between the individual's home and office or designated official station may not be considered as a part of the total.

Employees who are assigned a state-vehicle on a temporary basis may take that vehicle to their place of residence for de minimis commute usage, such as staging the vehicle at home in preparation to travel the next day, or returning from travel to your home too late in the day to return the vehicle to your duty location.

2.8.2 Annual Take Home Vehicle Justification

Department heads must annually complete State Form (Justification of Take Home Vehicle Assignment) for each take home vehicle assigned in their department. Completed forms must be

submitted to Fleet Management Division, ATTN: Fleet Administration **no later than December 31st each year** or whenever a take home vehicle is newly assigned or reassigned. This form serves as the agency's justification of take home vehicle assignment and proof of meeting the criteria outlined above.

2.9 Vehicle Accident

In case of a vehicle accident while operating a state vehicle:

1. Call the West Virginia State Police or appropriate law enforcement agency.
2. Notify the Board of Risk and Insurance Management as soon as reasonably practical by completing the Loss Reporting Form on the Board of Risk and Insurance Management's website and submitting the process prescribed by the agency.
3. Notify manager and/or supervisor.
4. Make no statement as to fault or liability. If a claim results, respond to law enforcement authorities or someone hired by the state to investigate the accident.
5. Obtain the name, address, phone number, driver's license number, vehicle license plate, insurance company and policy number of all involved drivers. Diagram the accident. Obtain the name, address, and phone number of witnesses and passengers.
6. The State employee driving the vehicle is also responsible for supplying the attending police department's report to his/her agency's vehicle coordinator and repair facility so that it can be attached to the repair estimate.
7. Fleet Management Division should be contacted to cancel any services.
8. If the vehicle needs to be towed, every effort should be made to have the vehicle towed to the nearest secure state facility, in lieu of a private storage facility.

2.10 Vehicle Theft Procedures

In case of vehicle theft:

1. Notify the appropriate law enforcement agency. Record the attending officer's name and badge number.
2. Obtain the name, address and phone number of any witnesses.
3. Notify the Board of Risk and Insurance Management.
4. Notify your agency director/agency fleet coordinator of the theft.
5. Turn in any keys to the vehicle to the agency fleet coordinator to cancel any services, fueling and maintenance.

2.11 Vehicle Fleet Administration

2.11.1 All newly purchased vehicles must be titled, registered and plated through the Division of Motor Vehicles.

2.12 State Fleet Management System

2.12.1 All State-owned vehicles, both motorized and non-motorized, are required to have a state plate and must be entered into wvOASIS Fixed Assets.

2.12.2 The Department of Administration Fleet Management Division oversees vehicles 1-ton and under, excluding ATV's or vehicles requiring a commercial driver's license. Agencies must report vehicle information fitting these criteria to the Fleet Management Division, including

maintenance and fuel purchases. Reporting this vehicle information to the Fleet Management Division does not negate or supersede the requirements for the vehicles to also be reported to wvOASIS Fixed Assets.

2.12.3. Agencies may keep supplemental vehicle information and records in other systems, but these supplemental systems do not supersede the requirements of this policy to report vehicle information to the Fleet Management Division.

2.13.4. Agencies are responsible to maintain current and accurate vehicle information such as odometer readings for vehicles in the agency's fleet, under the oversight of the Fleet Management Division and report that information to the Fleet Management Division.

2.13 Vehicle Fuel Cards

The state- wide fleet fuel card program (which is not to be confused with and is separate from the Auditor's P-card) provides State agencies with a widely accepted fleet fuel card. The card allows drivers of State vehicles to purchase fuel for those vehicles. Use of the fleet fuel card is designed to streamline and automate the purchase of fuel for state business. All fuel transactions must be reported to the Fleet Management Division at least annually. All fueling transaction must be facilitated by an approved Fleet Management Division mechanism.

2.14 Vehicle Maintenance

2.14.1 All Maintenance/Repair activity must be reported to the Fleet Management Division at least annually.

2.14.2 All Maintenance/Repair activity must be facilitated by an approved Fleet Management Division mechanism.

2.15 Placement of Policy in State Motor Vehicles

2.15.1. A copy of this statewide administrative policy shall be placed and kept in all state motor vehicles.

3.0 Direction

3.1 This direction applies to all Executive Branch Agencies, whether or not the agency is exempt from the State Purchasing Division or subject to any other exemption.

3.2 This policy supersedes any previously issued directive or policy and will remain effective until canceled or superseded.

4.0 Inquiries

Direct inquiries about this policy to:

Kenny Yoakum
Director, Fleet Management Division
Department of Administration
2101 Washington Street, East
PO Box 50121, Building 17
Charleston, WV 25305-0121
Ph # 304-558-2106 or Fax # 304-558-4084